IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5032 OF 2005

Dinesh Chintaman Patil & Ors. .. Petitioners

Versus

Avinash Hareshwar Patil & Ors. .. Respondents

Mr.V.Z.Kankaria for petitioners

Mr.S.H.Joshi for respondent Nos. 1, 2A to 2G

Mr.A.J.Joshi with Ajay S.Gharat for respondent No.3

Ms.Vaidehi Mhaisapurkar, A.G.P. for respondent No.5.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 19th January 2006.

P.C.

. This petition was adjourned from time to

time firstly to enable the State to file affidavit. Although, time has been sought from September 2005 to file affidavit and the same came to be extended in November 2005, no affidavit has been placed by State Government on record. However, private respondents viz., respondent Nos. 1 and 2A to 2G as also respondent No.3 are appearing through Advocates and they have placed on record affidavits.

2. The challenge in this petition is to the orders passed by the Dy.Director of Land Records, Konkan Division on 29th April 2005 in Appeal No.ADM/Appeal SR 675/04 and Appeal No.SR 100/04 by which he affirmed an order dated 31st January 2004 passed by the Superintendent Land Records, Thane.

3. Superintendent Land Records was approached by the appellants who are respondent Nos.1 to 4 herein. Their grievance was that, the

petitioners have wrongfully and illegally converted the user of an agricultural land and such non agricultural user being unauthorised, the authorities should take appropriate action. The property in question is situate at Mouje Navli Taluka Palghar bearing Survey No.56/1A and City Survey No.304, admeasuring about 3870 sq.mtrs.

4. It appears that the said authority was pursuaded to set aside the entries made pertaining to the non agricultural user of this land. Mr.Kankaria submits that these entries were made as early as on 3rd October 2001 and 17th October 2001. Said entries were based upon a permission to carry out non agricultural user granted as far back as on 15th December 1949. That, entries are in favour of the predecessor in title of petitioner No.1 Mr.Chintamani Patil. According to Mr.Kankaria, it is based upon this original order, entries dated 3rd October and

17th October 2001 have been made and, therefore, after a lapse of 3 years or so, the same could not have been disturbed or interfered with in appeal. No reasons are assigned as to why the Superintendent found it fit to interfere with these entries, after this enormous delay. So also, no reasons have been assigned in the order passed by Dy.Director of Land Records, Konkan division on this aspect.

5. When this petition was adjourned time was sought to place on record original entries. It appears that photocopies of some entries pertaining to this land have been placed on record of this Court. Mr.Kankaria also tenders copies of the order passed on 3rd and 17th October 2001.

6. In my view, appropriate course would be to allow parties, including the private respondents to place their version pertaining to

the non agricultural user in respect of this land afresh by placing the entire material including that forming part of the record of this petition. This course should be adopted, because, both sides agree that number of documents are there on record to support rival contentions. Although, time was sought by the learned A.G.P. it appears that in the absence of instructions, no affidavit has been filed. Be that as it may, Mr.Kankaria agrees that the matter be re-heard on merits by the Taluka Inspector of Land Records, Palghar and he should pass appropriate orders on merits after hearing both parties, in my view, interest of justice would be served if the orders under challenge are set aside and parties are directed to appear before T.I.L.R. Palghar on 13th February 2006 and the said authority shall after hearing both sides pass appropriate orders on merits and in accordance with law, uninfluenced by any observations made in the order dated 31st January 2004 and 29th April 2005. Both sides are

at liberty to place such material and documents including maps and orders pertaining to non agricultural user, if any. All contentions of both sides are expressly kept open. T.I.L.R. should not be influenced by the earlier orders as also the present order while deciding the matter and shall pass orders on merits and in accordance with law.

(S.C.DHARMADHIKARI, J)